IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 2125 (SS) OF 2001

(Old No. 46843/2000)

1. Nandan Singh Bisht, S/o Sri Ganga Singh Headmaster, Uchhattar Madhyamik Vidyalaya Bour, P.O. Bhounkhal, Talla Salt, District – Almora.
2. Dayal Singh Rawat, S/o Gopal Singh Assistant Teacher, Uchhattar Madhyamik Vidyalaya Bour, P.O. Bhounkhal, Talla Salt, District – Almora.
3. Kundan Ram, S/o Bali Ram,
   Assistant Teacher, Uchhattar Madhyamik Vidyalaya Bour, P.O. Bhounkhal, Talla Salt, District – Almora.
4. Mahesh Chandra Upadhyaya, S/o Bachi Ram Upadhayaya, Assistant Teacher, Uchhattar Madhyamik Vidyalaya Bour, P.O. Bhounkhal, Talla Salt, District Almora.
5. Prakash Narayan Asnora, S/o Khyali ram Asnora, Assistant Teacher, Uchhattar madhyamik Vidyalaya Bour, P.O. Bhounkhal, Talla Salt, District – Almora.
6. Jiwan Singh Bisht, S/o Chandan Singh Bisht, Clerk in Uchhattar Madhyamik Vidyalaya Bour, P.O. Bhounkhal, Talla Salt, District – Almora.
7. Madho Singh Bisht, S/o Nar Singh Bisht,
   Peon in Uchhattar Madhyamik Vidyalaya Bour,
   P.O. Bhounkhal, Talla Salt, District – Almora.
8. Nanda Ballabh Balodhi, S/o Govind Ballabh Balodhi,
   Peon in Uchhattar Madhyamik Vidyalaya Bour,
   Post - Bhounkhal, Talla Salt, District – Almora.
9. Smt. Somiti Devi, W/o late Anand Singh Peon in Uchhattar Madhyamik Vidyalaya Bour, Post - Bhounkhal, Talla Salt, District – Almora. .....Petitioners.

Versus

1. State of U.P.
2. Director of Education (Madhyamik), U.P. Allahabad.
3. Director of Education (Basic), U.P. at Allahabad.
4. Joint Director of Education Kumaon Mandal, Nainital.
5. District Inspector of Schools, Almora.
6. District Basic Education Officer, Almora.
7. Committee of Management,
   Uchhattar Madhyamik Vidyalaya Bour,
   P.O. Bhounkhal, Talla Salt, District-Almora.

.....Respondents.

Dated: 30.03.2006

Hon'ble Rajesh Tandon, J.

Heard Sri V.B.S. Negi, Advocate for the petitioner, Standing Counsel for the State of U.P. and Standing Counsel for the State of Uttaranchal.

2. By the present writ petition, the petitioners have prayed for a writ of mandamus directing the respondent to pay the salary to the petitioners including the arrears and also regular salary as and when it becomes due.

3. Briefly, stated, according to the petitioners, petitioners no. 1 to 5 are qualified for the post of Headmaster as well as Assistant Teachers in Junior High Schools. The petitioner no.6 is also qualified for the post of Clerk and working in the Institution as Clerk. The petitioners nos. 7, 8 and 9 are appointed as Class IV employee in the institution.

4. In the year, 1982, Uchhattar Madhyamik Vidyalaya Bour, Post – Bhounkhal, Talla – Talla Salt, District-Almora was

Started and temporary recognition was given to the said Institution and thereafter on 12.10.1985 the same institution was recognized by the Authority concerned.

5. On 26.07.86-87, the Assistant Director (Basic) Education Kumaon Region, Nainital sanctioned five posts of Teacher, one post of Clerk and three posts of Class IV employee in the said institution.

6. Approval was granted to the petitioner no.1 to work as Headmaster on the pay-scale of 490-860 on 12.12.1986 .

7. Approval was granted by the Basic Shiksha Adhikari, Almora to the petitioners no. 2,3,6,7,8 to work on the pay-scale of 450-720, 450-720, 354-550, 305-390 and 305-390 respectively on 02.01.1987.

8. Approval was granted to the petitioner no. 4 on 18.09.1989 to work on the pay scale of 450-720.

9. The petitioner no. 5 was granted approval to work on pay scale of C.T. Grade teacher.

10. According to the petitioners, they were confirmed as Headmaster, Assistant Teachers, Clerk and Peon in the same institution and they had been continuously performing their duties in the said institution. It is submitted that on 31.03.1987 the petitioner's institution was placed in the grant-in-aid under the provisions of Junior High School (Payment of Salary) Act, 1978.

11. In pursuance of the order dated 31.03.1987, the Basic Shiksha Adhikari issued a letter in respect of grant-in-aid of the Institution. The institution was put under the Payment of Salary Act, 1978 and all the petitioners are continuously receiving their salary under the same Act through the District Basic Shiksha Adhikari, Almora.

12. The petitioners' Institution was upgraded to the level of High School by the State Govt. on 19.08.2000 and the Secretary of Madhyamik Shiksha Parisahd Kumaon Region Nainital also recognized the upgradation of the petitioners' Institution on 26.09.2000.

13. In pursuance of the letter dated 19.08.2000 as well as order dated 26.09.2000 District Inspector of Schools Almora permitted the petitioners Institution to start the High School Classes in the same institution. Subsequently, classes of 9 were started, which is still going on, according to the petitioners.

14. The grievance of the petitioners is that all the Assistant Teachers, Head Masters are qualified for the post of Teacher and Headmaster and all the Assistant teachers including the Headmaster are teaching in the High School classes in the said institution, but they are not being paid their salary after upgradation of the school.

15. Petitioners have submitted that there are several such other institutions, which were recognized as Junior High School, were upgraded to the level of High School, but the District Basic Education Officer and other officers did not pay the salary to the teachers of the School on the ground that

since their Institution has been upgraded to High School and the high School does not comes under the Payment of Salary Act, 1978 as such the teachers and other employees of the Junior High School are not entitled for payment. The order was also challenged in the High Court of Allahabad and the Allahabad High Court directed that Basic Shiksha Adhikari as well as Committee of Management shall pay the salary to the teachers and other employees of Basic Institution continuously, who are approved teachers.

16. Petitioners have submitted that after the recognition of the Institution of the petitioners, the respondents are not paying the salary under the payment of salary Act, 1978. The petitioners were not paid their salary as the Director of Education U.P. Allahabad issued a letter to all the authorities that the teachers and employees of the Junior High Schools in the Education Institution, who has been upgranded may not be paid their salary except those cases where there is direction from this Hon'ble High Court.

17. Petitioners have further submitted that under the aforesaid letter, special grant was granted to various institutions.

18. In the present writ petition, following interim order was passed on 31.01.2000:

> "Learned standing counsel has accepted notice on behalf of respondents no. 1 to 6. He is allowed one month's time to file counter affidavit. Petitioners shall take steps to serve respondent no. 7 by registered post. Steps within a week. Office shall

send notice returnable at an early date. List on the date fixed by the office in the notice.

Until further orders of this court, the petitioners shall be entitled to their salaries in the pay scale which was admissible to them before the institution in question was upgraded as High School.

Dated: 31.10.2000."

19. However, in view of the above, writ petition is disposed of directing the respondents to decide the claim of the petitioners in accordance with law within a period of six weeks from the date of production of the certified copy of this order.

20. Writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

30.03.2006
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